IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.610 OF 2006

Shri Mukesh Laxman Das Talreja
Age 43 years, adult,
Occ: Business, Resident of
222, Venus apartment, Colaba,
Cuffe Parade, Mumbai 400001. ....Petitioner.

V/s

The Inspector of Police
Kasturba Marg Police Station
Borivali (E), Mumbai-66 ....Respondents.

Mr. M.S. Mohite for the Petitioner.
Ms. S.U. Gajre, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 20th April, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioner and the learned PAP for the State.

2. By this Criminal Writ Petition, the petitioner seeks to quash the charge-sheet which has been filed by the State in respect of the offence which is punishable under the provisions of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975.

3. The learned Counsel appearing on behalf of the petitioner is seeking an order from this Court under Article 227 of the Constitution of India and under section 482 of the Criminal Procedure Code for quashing the criminal proceedings which have been initiated against the petitioner under the said Act. The learned Counsel for the petitioner has challenged the said proceedings on merits by submitting, firstly, that even if the averments which are made in the complaint are taken at its face value, no case is made out against the present petitioner and, secondly, it is submitted by the learned Counsel that the offence under section 21 read with section 8 of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975 is a non-cognizable offence and, therefore, no Police Officer can investigate the said offence unless permission is obtained by him under section 155(2) of the Criminal Procedure Code. He submitted that, admittedly, in the present case, the said permission had not been obtained. The learned APP appearing on behalf of the State, after taking instructions from the Investigating Officer, states that no such permission was obtained by the Investigating Officer under the aforesaid provisions of Cr.P.C.

4. The learned Counsel appearing for the petitioner

has relied upon the two judgments of the Supreme Court; one in the case of Keshav Lal Thakur Vs. State of Bihar reported in **(1996) 11 SCCC 557** and another in the case of State of Punjab Vs. Kasturi Lal and others reported in **(2004) 12 SCC 195**. He also relied upon the judgment of Kurdukar, J. (as he then was) in the case of Avinash Madhukar Mukhedkar Vs. The State of Maharashtra reported in **1983 Cri. L.J. 1833** and the judgment of the learned Single Judge of this Court in the case of Shivanand Giridhar Naik Vs. The Senior Inspector of Police & Anr. reported in **2000 ALL MR (Cri) 1646**.

5. I have heard the learned Counsel appearing for the petitioner and the learned APP for the State at length. It is an admitted position that the provisions of section 21 read with section 8 of the said Act constitutes an offence which is non-cognizable. It is further admitted that the permission which is required to be taken under section 155(2) of the Criminal Procedure Code by the Investigating Officer has not been taken. Section 155(2) of the Criminal Procedure Code reads as under:-

"**155. Information as to non-cognizable cases and investigation of such cases-**

(1).....

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

6. A perusal of the said section makes it clear that the aforesaid provision of obtaining the permission is a mandatory provision and if there is non-compliance of the said provision, the investigation which is carried out by the police officer would be rendered illegal and void. In my view, since the said provision has not been followed, the entire investigation which is carried out by the police officer will have to be set aside on this ground alone. I am fortified in my view by the judgment of the Supreme Court in the case of Keshav Lal Thakur (supra) and in para 3 of its judgment, the Supreme Court has held that neither the police could investigate into the offence which is non-cognizable nor submit a report on which the question of taking cognizance could have arisen, when permission under section 155(2) of the Cr.P.C. has not been obtained. The Supreme Court has also made similar observations in the case of State of Punjab (supra) and while laying down the ratio, has reproduced the categories

which were enumerated in the case of State of Haryana V. Bhajan Lal [1992 Supp(1) SCC 335 : 1992 SCC (Cri) 426] and in category Nos. 2 and 4 it has been observed as under:-

> "(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code."

> "(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute any non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code."

In the cases of Avinash Madhukar Mukhedkar (supra) and Shivanand Giridhar Naik (supra), the learned Single Judge of this Court has made similar observations.

7. In the result, the Criminal Writ Petition is allowed. Rule is made absolute in terms of prayer clause (a).

8. Criminal Writ Petition is disposed of in the above terms.

V.M. KANADE, J.